

10-4467

9 JUN 1958

Mr. John J. McCloy
18 Pine Street
New York 5, New York

Dear Jack:

Many thanks for sending me a copy of your
Lecture "The Extra-Curricular Lawyer" which I
have read with a great deal of interest.

I appreciate your thoughtfulness in re-
membering me in this way.

With kindest personal regards.

Sincerely,

Signed

Allen W. Dulles
Director

STATINTL

O/DCI, [REDACTED] June 58

Distribution:

Orig - Addressee

1 - DCI

1 - General Counsel w/basic

1 - AAB

1 - ER

1 - Reading

(EXECUTIVE)

[Handwritten signature]

"THE EXTRA-CURRICULAR LAWYER"

Lecture given by Mr. John J. McCloy,
Chairman of the Board,
The Chase Manhattan Bank of New York
at Washington and Lee University
Lexington, Virginia, on April 18, 1958

THE EXTRA-CURRICULAR LAWYER

When presented with the flattering invitation to give a lecture or series of lectures under the Tucker Foundation at this law school, I must say that my first impulse was to decline. I had this inclination because I was well aware of the dignity of these lectureships and the high quality of the discussions which have taken place under them. Moreover, it has been a long time since I have practiced law, indeed it has been since 1947, and then only for a year after a hiatus of five years covering the period of the war. So much has happened since then, both to me and to the law, that I felt that I could scarcely make a serious contribution to a legal discussion.

Yet, having spent the larger portion of my life as a practicing lawyer and having personally experienced the stimulation of the study and the practice of the law in the course of my subsequent activities in government and business, I was impelled to accept the invitation.

Because of the press of affairs, I asked Dean Williams if I might confine my efforts to one lecture and then join during my attendance on this campus in a panel discussion regarding the usefulness of the lawyer in this

challenging world. He agreed, and I appreciate deeply the consideration shown me since I understand that this arrangement varies considerably from the usual pattern of those lectures.

My choice of subject was to some extent prompted by the thought that many of you presently studying law at this University, and indeed some of those among you who are now actively practicing law, will at some time in the future be presented with the problem of choosing between the practice of law in the generally accepted sense and a career or at least an extended tour in the field of either business or government. It occurred to me, especially in view of this fact, that some expression of the inter-relationship of the three careers might serve to give a perspective which would be helpful. Also, I am impressed with the significant contributions which legally trained men have made, and are making, in both government and business, and I believe there is ample cause for discussing those aspects of legal training which are particularly useful in the business world and in government service.

While the subject which I have chosen has been treated before and very authoritatively, I intend to deal with it primarily from the viewpoint of my own experience.

Also, the qualities and achievements of the legal profession have been the subject of comment over the years, the generous comment usually, to be sure, at the hands of lawyers themselves. Indeed, to read these comments one might well be led to believe that lawyers form a group of men and women with an array of virtues and qualities definitely not to be matched among "lesser breeds without the law". I too shall say some complimentary things about the well-trained lawyer and his profession. However, in holding up to you what seem to me to be some of the targets towards which the lawyer and the law student should aim, I also intend to say some critical things about tendencies the lawyer is apt to develop which often detract from his effectiveness as a government servant or businessman.

When I refer to the legally trained man, I am thinking primarily of the man who has spent a number of years in the practice of law after graduating from law school. I limit this discussion to lawyers who come within this category because in giving advice and in making the practical judgments which this involves they have necessarily drawn heavily upon experiences with human problems and behavior and the use of techniques, to say nothing of specific legal knowledge, which it is

difficult if not impossible to acquire while in law school. I do not contend that the study of the law in itself is not helpful in following other pursuits, but I do suggest that it is measurably less so than when it is combined with a number of years of practice. My definition of "legally trained" accordingly presupposes some degree of practical experience.

My first experience outside the law came when I was quite unexpectedly called upon to go to Washington to take a position in the War Department on the staff of the then Secretary of War, Henry L. Stimson. Mr. Stimson was a distinguished lawyer, and, incidentally, was as fine an example of a man who obeyed to the full the lawyer's call to public service as one can find in modern American life. Twice Secretary of War, once Secretary of State, Governor-General of the Philippines and United States District Attorney, Mr. Stimson always retained a vital interest in the law and after each tour of public duty returned to his practice.

Since 1940 I have been thrown in with businessmen, bankers, engineers, academicians, soldiers, sailors, administrators and politicians as well as practicing lawyers.

Generalities, as Mr. Justice Holmes bluntly put it, are never worth a damn,¹ but I believe I have seen and worked with enough lawyers in extra-curricular fields to form, with regard to them and their non-lawyer colleagues, a set of comparative impressions which justify comment. Naturally I speak of competent, well-trained, energetic and honest men when I make my comparisons.

I do not think that I need to present an extended array of statistics showing how influential and representative lawyers have been in the political and, in more recent times, commercial history of our country. Such research as I have done does, I can assure you, confirm the fact of their wide presence if not of their wide influence. It shows, for example, that in the legislatures, at any rate, the legal profession is much more heavily represented in our national Congress than in the British Parliament or, indeed, in any other national assembly that I know of.² In our

¹ 1 Holmes-Pollock Letters 118 (Howe ed. 1941);
2 id. at 13, 59.

² Lawyer membership of the 85th Congress is approximately 59% in the case of the Senate and approximately 61% in the case of the House of Representatives. CCH Congressional Index 2001-71 (1956). Combined barrister and solicitor membership of the House of Commons was approximately 19% at the time of the most recent General Election in 1955. Butler, The British General Election of 1955 43 (1955); Dod, Parliamentary Companion (1955). By-elections held since the General Election have increased the figure to approximately 20%. The most recent figures

society, with a federal and forty-eight state legislatures, it is natural that there should be a great demand for lawyers, and I am sure that this aspect of our national life accounts in substantial part for the large number of lawyers who become public figures. We are, moreover, a legalistic country. We have a much wider field of application of statutes and regulations than is the case elsewhere. Our inheritance of governmental traditions and customs is relatively small. In England, France and Germany, for example, neither public nor business life requires such a familiarity with the multiplicity of legislation and regulation which we encounter. The ever-increasing volume of this material is a further reason why lawyers in this country are more apt to become interested in public affairs and more conscious of public needs.

I am also going to ask this group to take judicial notice of the fact, without citation, that the lawyer's role

2 (Cont'd from preceding page)

available for the French National Assembly show that approximately 14% of the members of the 2nd Legislature elected in June, 1951 were either 'avocats', 'avoues' or 'notaires'. Annuaire de l'Assemblée Nationale (Office Français d'Éditions Documentaires 1952). Of the 519 members of the 3rd German Bundestag, the elected house of the German Parliament, 55, or approximately 11%, are classified as "jurists, lawyers, notaries and other legal officials". Bulletin des Presse - und Informationsamtes der Bundesregierung (No. 202, p. 1851, Oct. 29, 1957). To take another example from farther afield, it is stated in Singh, Indian Parliament (1952-57) XXV (New Delhi 1957), that in 1953 130 of the 497 members of the House of the People and 60 of the 207 members of the Council of States were lawyers, or approximately 26% and 29% respectively.

at the birth of our nation and the establishment of our Constitution was a predominant and brilliant one. At the beginning of our government, a number of lawyers, many of them Virginians, preoccupied themselves with the framing of the new government forms and together provided what I suppose is as striking an example as history affords of the lofty role a legally trained and inspired group of men are capable of playing at a critical moment in the life of a nation.

It is not my purpose today to give detailed attention to the development of the legal profession since early times. Such a treatment of the history of the lawyer would indeed be primarily of relevance to a discussion of the lawyer in his traditional roles of advocate and counselor, for large-scale participation by the lawyer in the extra-curricular fields is a phenomenon of more recent years, especially in the area of business where the lawyer's presence cannot be traced back far beyond the turn of the century. We may, however, note in passing that in the Athenian city-state those who performed functions most nearly equivalent to the lawyer as we now know him sometimes played a substantial part in Athenian political life. Pericles, for example, began his rise to eminence with a successful appearance as public prosecutor of Cimon in 463 B.C. Rome of course had lawyers as we understand them, and law was indeed Rome's greatest

legacy. As Roscoe Pound points out, the Germanic overthrow of the Roman Empire gave a severe setback in Western Europe to the idea of representation of the parties, which in general was not permitted. Except in the ecclesiastical courts, it is not until the 12th century that we find a return to the notion of representation in the English civil courts and at a somewhat later date on the Continent.³

I shall also forbear from examining the extent to which the lawyers of pre-American history achieved prominence in public affairs, although, if only to illustrate the lawyer's high regard for his own worth in the extra-curricular area, I will mention Henry IV's prohibition against the election of lawyers at a certain session of Parliament.⁴ This provoked from some the nickname "lack-learning Parliament"⁵ and from Coke the observation that "There was never a good law made thereat".⁶ For the adverse comment we may turn to a non-lawyer, and to one, Thomas Jones, who at the very time in our history of which

3 Pound, *The Lawyer from Antiquity to Modern Times* 61-82 (1953).

4 1 Blackstone, *Commentaries* *177.

5 Ibid.

6 4 Coke, *Institutes* *48.

I have already spoken - when lawyers were making so impressive a contribution - deeply deplored the large number of lawyers in government. In "An Address to the People of Virginia", Jones had this advice to give:

"The unbounded influence of lawyers, fellow-citizens, has already produced all the effects of an aristocracy. * * *⁷

"Discard them, then, from your legislative councils, and you have nothing to fear from them."⁸

This advice seems to have worn thin with the passage of time, if it was ever heeded, for I notice that over 50% of the combined membership of the 1958 Session of the Virginia General Assembly is made up of lawyers!⁹

To turn from the historical to the present, Jean Monnet, the great European integrator and thinker, to suggest but certain of his attainments, is reputed to have once inquired - it was during the war when he was head of the Allied Purchasing Commission - why it was that whenever he ran across a particularly effective person in Washington in the operating divisions of the various government departments and agencies, that person was so frequently a man with legal training. His remark does indeed point up the interesting fact that men with the training and background

⁷ Thomas Jones, An Address to the People of Virginia 17 (1807).

⁸ Id. at 19.

⁹ General Assembly of Virginia: Biographies of Members, Session of 1958 (1957).

peculiar to the legal profession are playing an increasingly large part today in government, and, I should add, business, both of them fields of direct action which are at first glance far removed from the advisory and argumentative aspects of legal practice. It does I believe indicate that there is something in that training which when imported into other areas can, and often does, produce impressive results. Since the lawyer's own profession tends to be a constant source of interest and reflection to him, the lawyer-like skills and attitudes have received perhaps an unusual amount of attention. I am sure your professors have insistently admonished you to think and act like lawyers; perhaps you have asked yourselves just what these lawyerly attributes are, as I did in my law-student days and indeed found myself doing while preparing this lecture.

Now I think I should attempt to isolate some of the attributes which legally trained men and women can be reasonably expected to bring to their non-legal callings. There is I believe at the core of the legal personality an attitude from which almost all of the lawyer's skills and attributes derive themselves or by which at least they are made more meaningful. This I will label, in the language of Charles Curtis, the eminent Boston lawyer and writer, the

attitude of detachment.¹⁰ Emerson aptly described the effect of this attitude when he said that "The consideration of time and place, of you and me, of profit and hurt tyrannize over most men's minds. Intellect separates the fact considered from you, from all local personal reference, and discerns it as if it existed from its own sake." ¹¹

I am in full agreement with Curtis when he suggests that from both the attorney's and the client's standpoint the practitioner's detached attitude is an essential limitation upon absolute devotion to the cause of one's client. ¹² The effective lawyer must learn to combine the two; when trying a lawsuit, for example, he must view with a certain degree of objectivity such factors as the merit of the opposing side's arguments and the possibility that they, even if without merit in his eyes, may be the ones which carry the day.

Here, then, we see two forces at play - the lawyer's zeal for his client and his awareness and acceptance of the practical limitations of reality. It is the balance

10 Curtis, *It's Your Law* 32 (1954). My sincere thanks are due to the author of that admirable book for the helpful suggestions which he made during the preparation of this lecture. He and his equally distinguished brother, Richard C. Curtis, now deceased, were at law school with me and even in those days I had frequent occasion to admire them, as indeed I have continued to do throughout the years.

11 Emerson, Intellect, in *The Essays of Ralph Waldo Emerson* 110 (Book League of America ed. 1941).

12 Curtis, op. cit. supra, note 10, at 31-36.

between the two, resulting as it does in an intelligent and workable degree of detachment, which makes for the lawyer's strength and for a sharper realization of the fact that there are frequently at least two sides to every question, neither being completely devoid of merit. As is the case with so many of the lawyer's attributes, this attitude can spell disaster, for the end-result can become indifference and irresponsibility. Yet, tempered as it must be in the competent lawyer, it gives real force and effectiveness to many of those skills which I think account in large part for the ability of the legal man to make a success of his extra-curricular endeavors. If we seek an example of the broad application in government of the disinterested approach, we may find it in the legislative process. When de Tocqueville referred to lawyers as being the element of sobriety without which democratic institutions could not for long be maintained,¹³ he put his finger upon one of the reasons why a strong representation of lawyers in the legislature is in at least one respect a salutary thing. The lawyer's approach in the business of legislating can be an effective brake on the easily aroused caprices of public opinion which sometimes seek to carry ill-considered changes

¹³ 1 de Tocqueville, *Democracy in America* 276 (Bowen transl., Bradley ed. 1945).

into the law. For, after all, some stability and predictability are highly useful and desirable elements in the law. "Cursed (saith the law) is he that removeth the land-mark," as Bacon once put it.¹⁴ Bearing in mind this indispensable element of the make-up of the lawyer when we come to discuss some of his other characteristics, I think we will see of what greatly reduced value his training is to him if he cannot maintain a certain reserve which permits him to remain on what Curtis calls the "upland of his own personality".¹⁵

Perhaps one of the areas in which this detachment finds its greatest embodiment is in dealing with facts. They are indispensable to the lawyer at every turn, yet they have an inconvenient habit of presenting themselves in anything but an orderly manner and do not come helpfully labelled in degrees of materiality. This makes essential an ability to deal with large and complicated bodies of fact and by a process of elimination to arrive at a residuum which is material to the issues under consideration, and which indeed often plays an important part in framing those issues.

This ability to unravel the tangled skein must be a part, at least, of what Mr. Justice Frankfurter had in

¹⁴ Bacon, *Of Judicature*, in *The Essays of Sir Francis Bacon* 252 (Scott ed. 1908).

¹⁵ Curtis, *op. cit. supra* note 10, at 35.

MIND WHEN HE LABELLED THE LEGALLY TRAINED MAN AN "expert in relevance". He defines this as "a person who has intellectual disinterestedness, who penetrates a problem as far as the human mind is capable of penetrating, and who is free, who is not entangled in exercising a fair judgment and is not thwarted by personal, partial or parochial interests."¹⁶ The value of this expertise in relevancy is well exemplified in the ability which the lawyer must have, to deal in rapid succession with a series of widely varying problems, to solve one and pass on with very little ado to the next. This moving from case to case, this intermittent but intense application to one issue after another, does certainly sharpen the lawyer's sensitiveness to human situations and motivations. It is apt to give him wider experience with a greater variety of people and problems than the normal run of his fellows. He is perceptive, through his experience, of the noblest and the basest in human nature.

President Lowell of Harvard commented, to some degree, critically, on the episodic nature of the practice of law when he observed that "the work of the practising lawyer * * * is normally a series of short objectives.

¹⁶ Frankfurter, Personal Ambitions of Judges, 34 A.B.A.J. 656, 747 (1948).

The life of such a man is of course devoted to his profession, but not to the study of it as a consecutive, systematic pursuit of all the knowledge on the subject. His attention is directed to a particular case, followed by another with a somewhat different group of questions, each being a unit by itself which in time he puts aside as finished so far as he is concerned."¹⁷

It is tempting to come back to Mr. Justice Frankfurter's neat dictum, for his emphasis upon relevancy is itself relevant to the criticism which we often hear made that lawyers are not much interested in getting at the truth. You may have read last month some fairly outspoken comments on that score, made by a doctor and based I suspect upon a number of rather painful experiences under fire on cross-examination. It was suggested that if it really were truth the judicial process was designed to elicit there would be no need for lawyers in the courtroom.¹⁸ I think that this recurrent criticism of the lawyer's allegedly low regard for truth can be met by pointing out that to the lawyer truth and relevancy are to a large extent synonymous. The lawyer is probably not so much concerned with getting at the truth of a given proposition in any absolute sense but rather with

¹⁷ Lowell, *Conflicts of Principle* 151-52 (1932).

¹⁸ Remarks of Dr. Emil Seletz at the biennial congress of the International College of Surgeons, N.Y. Times, March 11, 1958, p. 1, col. 3, p. 21, cols. 5-7.

determining its relevancy in relation to some other proposition. It is possible, as Whitehead, the philosopher, puts it, for a statement to be false under one aspect yet true under another, its truth depending upon its relevancy. In its relevant aspect we call it true, in its irrelevant untune, although it is neither and both depending on the relevancy in which we see it.¹⁹ Whether or not we agree with Whitehead that truth and relevancy may be equated in this manner, we must agree that an expertness in relevancy in the sense of an ability to tell the material from the immaterial fact is an essential and most valuable lawyerly skill.

Not only is the expert in relevancy much more likely to come up with the right answer in any given situation than one who lacks this skill, but his technique will also save him from a great deal of wasted effort. To the lawyer, in the sense that his time is what he sells, time is indeed of the essence. And yet, though he may be highly conscious of the value of time, especially perhaps when it comes to the preparation of his bills, I believe that a further distinguishing mark of the lawyer is to be found in his capacity, indeed almost his instinct, to work without regard to hours. I am reminded of the remark attributed to

¹⁹ Lucien Price, Dialogues of Alfred North Whitehead 278 (1954).

a senior member of a large New York law firm to whom it was suggested that the legal staff's workload might be eased by employing additional lawyers. In rejecting the suggestion he replied, so the story goes, that such a move was in his opinion unnecessary since when he had left for home at 2 A.M. that morning there had not been a law clerk in the office. Having spent my pre-war years as a law clerk and a partner with that firm, I might perhaps add that the story is not necessarily apocryphal.

I must admit that I have had some trouble in selecting a single word which will properly define this instinct of the lawyer to apply himself wholeheartedly to his work when occasion demands. Myron Taylor once said that the legal mind knew no office hours but was an ever-abiding approach to life.²⁰ This conveys something of the idea, which is more than mere industriousness and implies a heightened sense of responsibility for the client's affairs and a willingness to respond to the unpredictably fluctuating demands of practice. This habit comes in part I think from the fact that the lawyer derives a good deal of his reward from the intellectual stimulation of his work and the knowledge that he has brought the sum total of his abilities and energy to bear upon the solution

²⁰ Myron Taylor, *The Lawyer's Opportunity: An Address to Cornell University Law School* 8 (May 29, 1941).

of whatever problem has confronted him. The hours which he puts in are also of course governed to a considerable degree by the demands of the particular case rather than the number of normal working hours of the day that he can apply to it, and much of his work is done in the shadow of some deadline that he must meet. Accustomed as he is to the pressure of deadlines and clients who need advice in a hurry, the lawyer's work habits and capacity are apt to stand out quite sharply in time of war or emergency. Those in government and business who are responsible for final decisions come to place heavy reliance upon one who has trained and accustomed himself, and I may add, his wife, to the habit of irregular hours.

Another facet of the attitudes and training of the experienced lawyer which merits comment is his competence in oral and written expression. So many times, particularly in Washington, I have seen gathered round a table a number of people representing various government agencies with varying points of view, all attempting to reach a conclusion on a given problem but with many muddy and irrelevant comments impeding any progress. Then, in this rather frustrating atmosphere, some brave Horatius speaks up, tersely and objectively summing up the issues and proposing a solution. Seeing people in this situation who, despite their real ability,

are unable to express themselves simply and clearly in a moment of important decision, has always reminded me of a Latin motto once inscribed on a wall of a classroom in my college.²¹ It read, to hazard a translation, "He who knows but cannot express what he knows might just as well not know." Its author I suspect was a man of perception, a lawyer perhaps, for in my recollection the one thus able to crystallize his thoughts has turned out often as not to be either a legally trained man or in many cases a soldier, whose professional training and military experience frequently combined to give him this ability to speak his thoughts with brevity and clarity. In this kind of situation it has been that individual who almost invariably has found himself seized of the problem and the task of seeing it through to its conclusion, rather than the men who, though perhaps abler than he, sat silent or stumbled over their exposition.

The ability to communicate one's thoughts, and to do so persuasively, is a major weapon in the lawyer's armory. I am not for a moment suggesting that the majority of lawyers are or should be orators. I have no statistics to offer you,

21 It was formerly to be found in the classroom of Professor John F. Genung of the faculty of Amherst College, and ran "Qui novit neque id quod sentit exprimit perinde est ac si nesciret."

but I am sure that for every lawyer who goes with any degree of regularity before a court or administrative tribunal there are dozens who do not set foot in the courtroom. What I am thinking of is the basic ability in court or in conference, to express one's self by getting one's point across with simplicity, speed and clarity. This is something which the good lawyer can and must be able to do. It involves a command of language as a vehicle for well-organized thoughts. It is as much related to the concept of detachment as is any lawyerly art, for although there are undoubtedly situations where the speaker's emotions may be implicated without detriment to his capacity to persuade his audience, yet I think it accurate to say that once the concededly subtle point of balance is passed, the ability both to marshall one's thoughts objectively and to express them cogently decreases in proportion as the emotional involvement is heightened.

In general I would say that the legally trained man has developed a greater capacity to be articulate than his non-lawyer colleagues in government and business. This may be partly due to the fact that in the course of his practice he has had to do a good deal of explaining to a varied group of clients often as not in language which the layman must understand. I can assure you that in the pressure

of a busy day and the need for prompt decisions this ability becomes a jewel of real worth.

I might add that the task of seeing a problem through, of tidying up the ends and translating decisions into actionable form, is a sometimes drab and irksome one that it often falls to the extra-curricular lawyer's lot to perform. Frequently involved in this process of implementation, as indeed it is in every phase of government or business, is the reading of documents and papers, and from them the drafting of other materials. I am sure that it is an indictment of our society that, as I have found, so few people read and read intelligently. It is too much to expect that men of ordinary training will comprehend the small print that some lawyers are capable of drafting. But certainly the capacity and disposition to read complicated and lengthy documents is an essential part of the lawyer's equipment as also it should be for the government administrator and businessman. The rareness of the individual who has the willingness and capacity to do this betrays this shortcoming and increases the value of the services of the legally trained man. Some may regard as the work of the drudge that which consists in the main of implementing the decisions of others or preparing the materials upon which such decisions will be based. Even if this be true, I am disposed to regard it as a very high order of drudgery that calls for perseverance and discipline

of mind, and one in which a failure to give a sedulous attention to detail can produce the most unfortunate consequences.

No discussion of the lawyer's art of persuasive communication would be complete without mention of his role in effecting compromise. In situations where compromise seems obviously to be called for, I have often been distressed to see conflicting viewpoints, often on minor issues, held with such tenacity that agreement was out of the question. Although the trained lawyer, when acting in a representative capacity, is prone to hold tenaciously to his points, once he is free of duties to a client he is admirably equipped by training and experience to view dispassionately both sides of a question and with detachment and clarity of expression to bring about an acceptable result. Indeed the area of compromise is one in which many of the extra-curricular lawyer's skills are called into play. He has learned to gauge human emotions and to make due allowance for them, for in his practice he has seen them flare and subside; his training has taught him the practical necessity at least of assessing the other side's point of view if not of conceding its merit; it has similarly given him the ability to judge what are the important and what the less significant facts of a situation.

I think that practice in explaining matters clearly and concisely and in drafting documents which are to be read and understood by others, sometimes others at a far removed point of time as in the case of a will or deed, also has an important use in these situations. By the very nature of the process of drawing a document or outlining a plan to compose the differences between two persons or two institutions or two governments, the drafter becomes an expert at finding the common ground, at locating the fruitful bases of cooperation. All these facets of the lawyer's experience are useful to him in promoting compromise and thus in enhancing his value, for no one I venture to say who has had government or business experience can fail to recognize how necessary a part compromise plays.

Because of the importance which I attach to it, especially in government, I must mention another aspect of what I have referred to as the trained lawyer's attitude of detachment. Men who engage in the public service as well as the work which they do, are daily the subject of comment - comment, moreover, which may be as varied in nature as there are shades of political and personal opinion surrounding government office. All of us have some conception of what

work must be like under these rather harrowing conditions when the public servant does not have the ability to avoid the frequently most uncomplimentary chatter of commentary. This does not mean that he can insulate himself from all consideration of public opinion; what the public thinks is of course important, just as what the shareholder thinks is a matter worthy for the consideration of corporate management. It means rather that he cannot permit himself to become caught up in the hazardous business of worry and introspection every time a barb is let loose at him, but must take the course and maintain the balance which his intelligence, experience and conscience dictate. The lawyer who has faced the give and take of the courtroom, who has debated before the appellate court with lawyers of equal skill and resourcefulness, or who has run the gamut of conferences with counsel for opposing sides has usually had a rich background with which to face this very exasperating side of public life. I would certainly go on record as believing that in this respect it is a good thing for the commonweal that experienced lawyers are willing to enter the ranks of government, and even business, to the extent to which they have.

I have tried to point out to you what I regard

as the more important lawyerly attributes which stand the lawyer in good stead when he turns to work in government or business. In doing so I have purposely refrained from drawing distinctions between these two major areas of human endeavor because it has been my experience that, in terms of the value of the lawyer's tools, government and business are substantially on a par with one another. The questions which are presented in government are frequently of greater magnitude than those which confront corporate management - there are a greater body of facts to be considered and more widely diverse interests to be weighed, but in terms of the techniques to be applied to their solution I do not believe there are differences of significance today.

I have told you of the value which I have come to place on the lawyer's ability to see both sides of a question. Having said so much about the meritorious attributes of the legally trained man, it would hardly be appropriate if I were to fail to inquire into some of the facets of legal training which, unless properly directed and circumspectly used, can often be detrimental to the career of the extra-curricular lawyer.

All, I take it, would agree that a lawyer in

protecting his client's best interests must adopt an approach which is to some extent cautious and critical. Lord MacMillan, however, points out the lawyer's propensity for being over-critical, and suggests that this is apt to place him under a handicap "in dealing with constructive proposals where success can be attained only by disregarding risks." From this he argues that "lawyers are not temperamentally well fitted for leadership either in politics or in business, in both of which spheres an adventurous spirit is essential. They may be admirable in deliberation; they are not so useful in action."²² MacMillan overstates the case against the extra-curricular lawyer, I think, but his remarks are certainly of value in pointing to an area of potential weakness, for here as with almost all of the desirable lawyerly traits, there is a danger in excess; excessive caution may all too easily become the handmaiden of inaction, and the bold plan be swamped in minutiae.

In his instinct for order and in the pride which he places in his ability to think logically, the lawyer sometimes permits himself to lose sight of the non-syllogistic, sociological aspects against which his problem

²² MacMillan, The Professional Mind, in Law and Other Things 256 (1937).

is set. Giving his views on the judicial function in language which applies equally to the extra-curricular lawyer, Bacon observed that "Judges ought above all to remember the conclusion of the Roman Twelve Tables; Salus populi suprema lex; and to know that laws except they be in order to that end, are but things captious, and oracles not well inspired."²³ I suppose that Mr. Justice Brandeis affords us as striking an example as we can find in recent years of a lawyer with a highly developed sense of social awareness. He surprised his legal brethren - a fact which needs no commentary - by writing briefs containing detailed analyses of the social aspects of his case. As the late Justice put it, "Knowledge of decisions and powers of logic are * * * servants, not masters. The controlling force is the deep knowledge of human necessities."²⁴

I have already indicated that the attitude of detachment, while valuable can also be overdone. So, too, in his much-prized capacity to be articulate, the lawyer can if he is so disposed become verbose and weary the air with his fluency. In short, he may talk a point to death.

Francois de Callieres in his work on the art of diplomacy, still regarded as a perceptive treatment of that

²³ Bacon, op. cit. supra note 14, at 257.

²⁴ The Words of Justice Brandeis 118 (Goldman ed. 1953)

branch of government, had this to say of the lawyer-diplomat:

"In general the training of a lawyer breeds habits and dispositions of mind which are not favourable to the practice of diplomacy. And though it be true that success in the law-courts depends largely upon a knowledge of human nature and an ability to exploit it - both of which are factors in diplomacy - it is none the less true that the occupation of the lawyer, which is to split hairs about nothing, is not a good preparation for the treatment of grave public affairs in the region of diplomacy."²⁵

In more recent times the lawyer-diplomat has been criticized by Professor Hans Morgenthau of the University of Chicago who suggests that Secretary of State Dulles' legal mind, great though it is, fails in the constructive tasks of statesmanship. In general, Morgenthau asserts that the lawyer's mind is uncongenial to foreign policy because, as a result of the episodic nature of the practice of law, the legal mind "sees reality dissolved into a sequence of isolated 'cases'",²⁶ an attribute which we had heretofore commented on as being helpful instead of detrimental.

The extra-curricular lawyer's work in international relations has also come under fire from Mr. George Kennan, who deplores what he considers the proneness of our lawyer-statesmen to seek solutions to international problems in the

²⁵ de Callieres, On the Manner of Negotiating with Princes 55-56 (Whyte transl. 1919).

²⁶ Morgenthau, The Decline and Fall of American Foreign Policy - II: What the President and Mr. Dulles Don't Know, The New Republic, Dec. 17, 1956, pp. 14, 17.

signing of treaties involving mere words.²⁷

In a reply to Messrs. Morgenthau and Kennan, Professor Alex Bickel of Yale dismisses all this as nonsense and says that "if anything is characteristic of the discipline of the law it is the tendency to kill the impulse toward the kind of silly 'ad hocness' Mr. Morgenthau berates and to instill profound distrust for the kind of unenforceable words Mr. Kennan disdains".²⁸

I am disposed to think that there may be something in what Morgenthau says. The lawyer has become accustomed to having his cases handed to him; he does not create them, and he is confined by the type of case with which he is presented and the necessity of presenting the side which his brief dictates. One must admit that this experience is not in itself conducive to creative, comprehensive thought and action. Quite probably, by reason of the episodic nature of legal practice, the lawyer does have something to overcome before he can perform as a creative thinker or planner, but, after all, this is largely a matter

²⁷ Kennan, American Diplomacy, 1900-1950 (1951). A large part of the chapter entitled "Diplomacy in the Modern World" is devoted to what Kennan calls the "legalistic-moralistic approach to international problems", which he defines in part as "the belief that it should be possible to suppress the dangerous aspirations of governments in the international field by the acceptance of some system of legal rules and restraints."

²⁸ Letter from Professor Bickel, The New Republic,

of genius, and it is difficult to point to any type of special training which of itself will instill these qualities.

In somewhat striking contradiction of the case against the lawyer-diplomat is what must be admitted to be an impressive list of lawyers who became Secretaries of State, including as it does the names of Jay, Jefferson, Marshall, Madison, John Quincy Adams, Clay, Calhoun, Webster, Seward, Hamilton Fish, Evarts, Hay, Root, Knox, Bryan, Hughes, Stimson, Cordell Hull, Stettinius and Messrs. James Byrnes, Dean Acheson and John Foster Dulles. In gauging the effectiveness of the American lawyer as diplomat, we cannot ignore this list which even critics of the profession must surely find impressive, and which contains the names of so many of the men who have been instrumental in guiding the country's affairs from the early days of nationhood to its present status as a world power.

Weighing in the balance what we may call the positive values and the negative tendencies of the lawyer's training, I think we must conclude that such training can be either a help or a hindrance to the lawyer in his quest for success in the extra-curricular world, but in no instance will it constitute for him a positive assurance of achievement. In short there is nothing "per se" about it.

The trained lawyer has, perhaps more than his fellows or at least to a degree worthy of remark, tools which when properly used and developed are most effective in business and government. Thomas Jefferson remarked that "The study of the law is useful in a variety of points of view. It qualifies a man to be useful to himself, to his neighbors, & to the public. It is the most certain stepping-stone to preferment in the political line."²⁹ Jefferson is rather high authority, but so many besides him have said that the law is an excellent preparation for almost any other pursuit, that I suppose it is only natural that we, at least, as lawyers, should come to believe it. But if there is one thing above all others that I would admonish the law student to abjure, it is the thought that in terms of rich human qualities the lawyer is, with all his training, in any sense ipso facto in a class apart from his fellow citizens.

I have seen, both in government and in business, men quite as industrious, as articulate, as detached and as objective as any lawyer. It would be nonsensical to think that the characteristics I have enumerated were exclusively

²⁹ Letter of May 30, 1790 to Thomas Mann Randolph, in 5 Writings of Thomas Jefferson 172 (Ford ed. 1894).

the possession of the lawyer, or that they were substitutes for breadth of mind, ability and courage. The attributes of the trained lawyer to which I have referred are, for the most part, tools which all wise and capable men employ or strive to employ. The most that we can say is, I believe, that, through constant use, these tools are apt to be kept better sharpened by the lawyer, and that when he is transposed into an environment other than the law they are likely to cut better in his hands than in the hands of even very able men whose pursuits have not so continuously demanded their sharpness.

It is equally absurd to say, for example, that nobody but a lawyer can be a good diplomat, in spite of the long list of outstanding Secretaries of State that I have referred to who were lawyers; so, too, I believe that Mr. Kennan is quite wrong when he says that a diplomat is too much handicapped by being a lawyer. This is too facile and superficial a comment to bear analysis.

Professor Henry Hart of the Harvard Law School states that in our complex society, "Law * * * is the inescapable context within which we all live."³⁰ I have

³⁰ Hart and Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* 217 (Tentative ed. 1957).

previously pointed out that much of our life moves by papers, whether it be a drugstore lease or an international agreement, a corporate charter or will, a birth certificate or, indeed, a law. Professor Hart, however, goes further than I have on this thought in drawing conclusions respecting the lawyer's qualities. So that the lawyer may be a better draftsman and his documents more clearly and effectively achieve the purposes of the decisions which they implement, this distinguished scholar insists that the lawyer must clearly understand the thoughts that went into the decisions which he is now called upon to translate into action. This need to understand thoroughly the underlying reasons for the decision does more than merely enhance his skill in draftsmanship, for in effect he, himself, becomes a part of the decision-making process. Because our life and society depend to so great an extent upon a wide variety of documents, the lawyer is, as Professor Hart puts it, "'an architect of the social structures' * * *; a specialist in the high art of speaking to the future * * * ."31

While I might be disposed to close this discussion on the note of the lawyer's high art of speaking to the future, yet in closing I would prefer to reiterate my warning.

31 Id. at 219.

The lawyerly arts are only potentials. They represent challenges, not certainties. You can well be proud of the great avenues in public service, in business, in the practice of law itself that your profession opens to you; but you should refrain from taking pride in the mere fact that you are a member of the legal profession unless you have brought heavily to bear on your work the fullest expression of your own inherent character and ability.

From the desk of

JOHN J. McCLOY

June 2, 1958

TO - Honorable Allen W. Dulles

Dear Allen:

You may be interested in reading
this sometime when you have the leisure.


Jack